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June 26, 2006

TO: Each Supervisor

FROM: Marvin J. Southard, D.S.W.
Director of Mental Health

SUBJECT: **REPORT REGARDING PROS/CONS/IMPACTS RELATED TO PARTITIONING FUNDING IN MENTAL HEALTH SERVICES CONTRACTS**

On June 20, 2006, on motion of Supervisor Molina, your Board instructed the Department of Mental Health (DMH) to report back in one week with an analysis of the pros and cons related to partitioning funding for program services, the impact of partitioning on program and service availability in communities, the impact on providers, and the impact on the DMH budget, specifically any savings identified from not providing contract flexibility in Fiscal Year (FY) 2005-06.

In addition, your Board instructed DMH to work with the contract providers and return to the Board in a week with a process and plan for resolving the issue of partitioning contract dollars within the next 30 days. The resolution of the issue, if approved by the Board, would be included in the FY 2006-07 and future contracts.

Background: Fund Allocation Partitioning and Shift of Funds Requests

At the beginning of each fiscal year, DMH establishes a budget with each contract provider that is based upon the negotiation package as prepared by the contractor and approved by the Department. The budget becomes part of the Legal Entity Agreement (LEA) and is approved by your Board. The LEA includes a Maximum Contract Amount (MCA) within which dollars are allocated for services to unfunded individuals (County General Fund (CGF) dollars), those eligible for categorical funding (e.g., CalWORKs), and those who are eligible for general entitlement programs (e.g., Medi-Cal).

The MCA partitions these allocations by funding source (i.e, payer) for three (3) reasons. The first is payer imposed terms and conditions. The second is State and federal statutory and regulatory requirements. The final reason is a desire to maintain at least a minimum level of funding commitment for mental health services to the

indigent population. The County has no jurisdiction to alter either of the first two conditions but as a matter of Board policy can modify the CGF allocation for the indigent population.

The Department also establishes agreements with contract providers about the types of programs and services to be delivered, the ages of the people to whom these services are targeted, and the supervisorial/geographic areas in which they are to be rendered. In this way, DMH tries to ensure that programs and services are distributed equitably throughout the County of Los Angeles, and that individuals with mental illness receive those services needed to achieve recovery to the extent possible within available public funding. During the course of each fiscal year, DMH typically amends many contracts through its standard procedures to provide reasonable degrees of flexibility.

The partitioning of funds consistent with the purposes and regulations for which funding has been granted is a Department compliance control mechanism. The partitioned funds may only be used for eligible expenditures incurred on behalf of the designated target populations as authorized by the respective payers' legislative restrictions, regulations and business rules. For example, the allocation of federal financial participation (FFP) and State General Funds (SGF) for Medi-Cal beneficiaries eligible for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) funded services must by statute and regulation be spent only for clients who are assigned EPSDT aid codes, and who are provided with medically necessary mental health services.

CGFs are also partitioned because State and federal statutes require that Medi-Cal, Healthy Families and Medi-Cal Administrative Activities expenditures are properly claimed from State and federal funds only when CGFs are certified under penalty of perjury to have been provided as the required local match. This State and federal local match requirement (with its required use of CGF) is the reason why the Department requires each contractor to report in their negotiation package a specific amount of Medi-Cal, Healthy Families and Medi-Cal Administrative Activities to be rendered. The Department is then able to budget the necessary appropriation for the State, federal, and County funds respectively as determined by the federal medical assistance percentage (FMAP), the State's sharing ratio, and the required local matching funds. Accordingly, the Department upon approving the contractors' negotiation packages sets aside the specific amount of required CGFs local match for the County to be compliant with State and federal Titles XIX and XXI funding participation and billing requirements.

The Department has partitioned some CGFs as a set-aside for the mental health care of the indigent population. This allocation for indigent care in the MCA was established by the Department to better control contractors' unilateral transfer of such CGFs from indigent care to Medi-Cal beneficiaries' care. Without this control, contractors can unilaterally reduce indigent care at their provider sites and refer those clients to directly operated County clinics. This is problematic because the clients referred must be more proactive in seeking out care and the mid-year caseloads at the County clinics may

result in delays in service because the staffing was based on a more equitable distribution of the indigent caseload between contract and directly operated providers.

DMH receives shift of fund requests from contract providers throughout the fiscal year. Shift of fund requests are made for a variety of programmatic reasons including a desire by providers to address changing service delivery needs of their clientele or those residing in the geographic area they serve. In other cases, providers request a shift of CGF dollars in order to "draw down" additional federal funds, thereby increasing their MCA. While the argument is sometimes made that services to Medi-Cal beneficiaries constitute an entitlement, it should be noted that legal opinion supports the principle that the entitlement rests with the beneficiary – not the provider. Therefore, it is possible that providers who routinely transfer unfunded clients in order to maximize Medi-Cal revenue could, instead, transfer funded clients in order to maintain a balanced public-private system.

Notwithstanding the partitioning of CGFs for local match and/or indigent care, the Department has had in place a procedure for contractors to request a redirection of CGFs for other uses than the originally designated purpose. The procedure requires the contractor to submit a redirection request for Department consideration and for written Department approval to be issued prior to the service delivery changes being made.

Pros and Cons of Partitioning Programs and Shifts of Funding Requests

Welfare and Institutions Code Section 5608 states that the local director of mental health services is responsible for administering local mental health services and exercises general supervision over such services. That includes maintaining responsibility for ensuring that public mental health funds are used:

- In compliance with State and federal requirements, including those that are specific to categorical funding sources; for example, the County does not have the legal authority to alter non-County funding sources or federal local matching requirements. Current Department practice to partition funds in compliance to these requirements reduces the County's financial risk. To remove the partition control would leave the County, as the primary responsible party for the funds, open to financial risk up to the MCA for any particular partitioned funding stream that is subject to either funding source or local matching requirements. Also, any non-compliance with federal statutes and regulations pertaining to federal local matching and billing can result in onerous corporate compliance plans, financial penalties, possible suspension as a Medi-Cal provider, and expensive compliance measures.
- For the supervisorial districts/geographic areas in which they are intended to be expended.

- To deliver services to individuals of all age groups including those with special linguistic and programmatic needs.
- To maintain services to individuals without a payer source; however, the consideration to remove the partition for CGFs allocated for indigent clients is solely a matter of County policy. Any redirected CGFs would be available to be expended for mental health care for non-indigent clients.
- To provide the types of general and specialized mental health programs required by the citizens of Los Angeles County and for which contracts are established.

DMH staff monitors contracts to ensure that these obligations are met.

Partitioning of funding and requests to shift funds can be positive or negative, depending upon the reason for the partition/shift, the impact on overall service delivery both within a particular provider and as part of the broader array of needed services in a given region, and the proper involvement and/or notification of both DMH and contractors in order to monitor agency and countywide service delivery.

Partitioning mental health funding may be considered positive for the following reasons:

- Categorical dollars are partitioned to ensure compliance with restrictions on the use of funding.
- DMH maintains the ability to balance varying match requirements for different funding sources – both within a particular provider and for the Department as a whole.
- The County is able to preserve the delivery of specialized services that might otherwise erode or disappear.
- The County is able to preserve the delivery of services to residents of Los Angeles County with no payer source by ensuring that providers do not use all CGF dollars as the local match to federal funds.
- A balanced system is preserved in which indigent clients are served by both County directly operated and contract providers.
- County financial risk associated with contractors is reduced.
- Unanticipated additional CGFs requirements are minimized.

Partitioning mental health funding may be considered negative for the following reasons:

- Both providers and DMH must carefully monitor expenditure of funds in various categories throughout the fiscal year.

- In the event service delivery is not consistent with conditions of the contract approved at the beginning of the fiscal year and providers have not negotiated changes with DMH, some funding may be unspent.
- Providers must seek DMH approval regarding transfer of dollars between partitioned funding sources, creating work and time constraints.
- The reduction of flexibility associated with partitioning may decrease the ability of contractors to add federal revenue to their budgets.

Similarly, requests regarding shifts of funding can be considered either positive or negative, depending upon the circumstances and consequences.

Shifts of funding may be considered positive when they:

- Result in mutually agreed-upon increases in services to those in need, without eliminating local delivery of mental health services to those who are indigent.
- Enable DMH and contract providers the flexibility required to address emerging needs of special populations.

Shifts of funding may be considered negative when they:

- Are done without DMH oversights, thereby impairing the Department's ability to balance its overall budget, including ensuring match requirements are met for all funding sources.
- Are requested at the end of the fiscal year resulting in an expectation of retroactive contract amendments.
- Involve unmonitored transfer of funding between supervisorial districts, posing a risk that clients in a particular region of Los Angeles will be underserved.
- Result in contract providers using all or nearly all of their CGF allocations as the local match for federal funding through the transfer of unfunded clients to the County directly operated facilities. This prevents the preservation of a balanced system of care and has a serious negative impact upon the fiscal well-being of County clinics and the Department infrastructure.

Impact on the DMH Budget

The FY 2006-07 Budget Reduction Plan developed by DMH in collaboration with the Chief Administrative Office (CAO) does not assume any additional savings from denying flexibility within contracts for FY 2005-06. If such flexibility was denied for FY 2005-06, we estimate that the projected closing surplus would increase by a minimum of $5 million. The actual amount of the additional savings cannot be accurately projected until all claims for FY 2005-06 are submitted, and contractors have up to six months

after the date a service is delivered to submit a claim. In addition, final amounts are not determined until completion of the State reconciliation and settlement processes, which takes up to two years after the close of a fiscal year. However, DMH supports allowing flexibility for FY 2005-06 pending permanent resolution of this issue to avoid the loss of thousands of dollars for services already delivered.

Plan for Resolving the Issue of Flexibility

Based on a conference call with the Chair and the Executive Director of the Association of Community Human Service Agencies (ACHSA), we will hold a summit prior to the end of July to discuss this issue and try to reach a consensus recommendation to submit to your Board for approval in August. The summit will include representatives from ACHSA, CAO, County Counsel, the Auditor-Controller, and DMH. To the extent a consensus cannot be reached, DMH will submit its recommendation to the Board and include the dissenting position of the contract providers.

Please let me know if you need any additional information, or your staff may contact Susan Kerr at (213) 738-4108.

MJS:SK:tld

c: Executive Officer, Board of Supervisors
Chief Administrative Officer
County Counsel
Auditor-Controller
Health Deputies
Budget Deputies
DMH Executive Management Team

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